

REMARKS

The Examiner is thanked for the due consideration given the application. This amendment is being filed concurrent with a Request for Continued Examination.

Claims 54-60, 64, 66, 68-75 and 114-116, 119, 120, 122 and 123 are pending in the application. Claim 121 has been cancelled by this amendment. New claim 122 finds support in Figure 3C and in the specification at page 16, lines 16-21. New claim 123 generally sets forth subject matter from claims 54 and 123. Also, new claims 122 and 123 set forth a new limitation of a trocar, which raises no new issues, and the next Office Action (if any) would necessarily be non-final.

No new matter is believed to be added to the application by this amendment.

Art Rejections

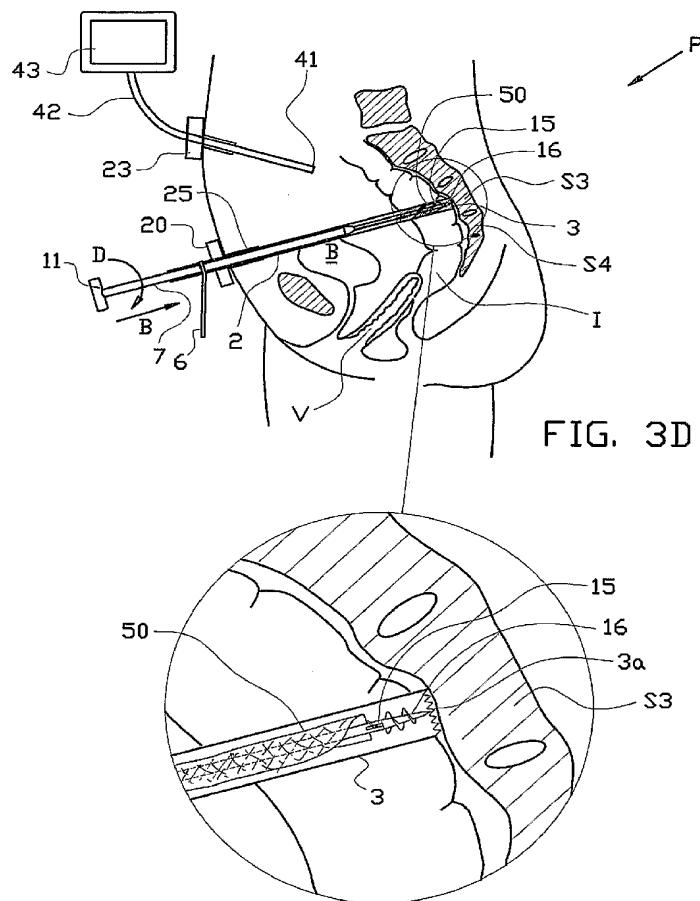
Claims 54-60, 64, 66, 68, 71, 72, 74, 114-116 and 119-121 have been rejected under 35 USC §102(b) as being anticipated by THIERFELDER et al. (U.S. Publication 2002/0028980).

Claim 69 has been rejected under 35 USC §103(a) as being unpatentable over THIERFELDER et al. in view of LOVUOLO (U.S. Publication 2002/0143234).

Claims 70, 73 and 75 have been rejected under 35 USC §103(a) as being unpatentable over THIERFELDER et al. in view of WORTRICH (U.S. Patent 5,458,606).

These rejections are respectfully traversed.

The present invention pertains to an assembly for use in the attachment of a patient's vaginal apex or uterus or rectum to her/his spine. The present invention is illustrated by way of example in Figure 3D of the application, which is reproduced below.



As is set forth in instant claim 54, the present invention includes a first tube, a second tube or rod having a length that at least equals the length of the first tube, which second tube or rod is provided with a distal end and includes an opposite proximal end, and at least one attachment device for

penetrating into the spine provided with a distal end for attachment to the sacrum and a proximal end for attachment of an end of a connector configured for connection to the patient's vaginal apex or uterus or rectum.

THIERFELDER et al. pertain to an implantable article. The Office Action refers to Figure 11 of the reference, which is reproduced below.

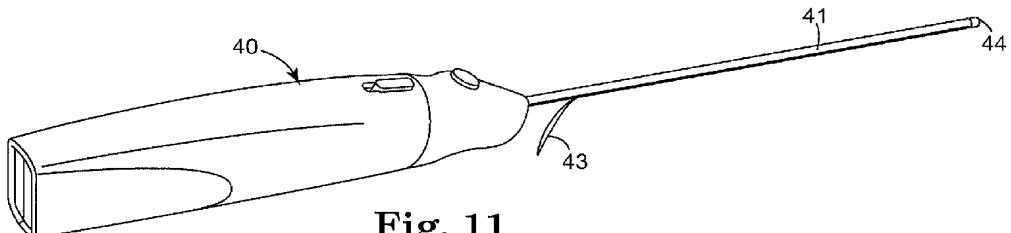


Fig. 11

i. The Office Action refers to the trocar mentioned in paragraph [0139] as the first tube, and indicates that this trocar has a length adapted to the distance from an outer wall of the patient's abdomen to a sacrum based on the device is described in paragraph [0072].

However the device in paragraph [0072] of THIERFELDER et al. is not the trocar that is identified in paragraph [0139]. The device in paragraph [0072] is a surgical article for implanting a self tapping bone screw. The device having a shaft that is preferably sized and shaped to extend from the abdomen of a patient to the sacrum.

There is neither a teaching nor a suggestion in THIERFELDER et al. that the trocar described in paragraph [0139] has a length adapted to the distance from an outer wall of the patient's abdomen to the sacrum.

ii. The "trocar" in paragraph [0139] is not a member of the assembly for attachment of a patient's vaginal apex or uterus or rectum to her/his spine.

Usually a trocar is a kind of a sleeve for inserting different kinds of endoscopes or minimal invasive instruments.

A trocar is not adapted to have a length adapted to the distance form an outer wall of the patient's abdomen to a sacrum, but a trocar is generally adapted to range from the outside of the patient's body just through the last tissue layer to be pierced to reach the operating field - which operating field itself may reach over a significant part of the overall length of the instrument reaching through the trocar to the operating field.

Therefore the trocar in every case is significantly, may even be much shorter than the instrument (second rod) independent of the patient's anatomy.

iii. The "second rod (Figure 11, surgical article, 40)" as described by THIERFELDER et al. does not have "a length that at least equals the length of the first tube (paragraph [0072]; trocar, paragraph [0139])" for the trocar - as described above - is adapted to not reach until the operating field, the "second rod", however, has to reach to the operating field!

iv. The distal end of the first tube (trocar, paragraph [0139]) as described by THIERFELDER et al. is not configured to be brought into engagement with the sacrum, as the trocar is not adapted to have a length adapted to the distance from an outer wall of the patient's abdomen to a sacrum, but a trocar is generally adapted to range from outside of the patients body just through the last tissue layer to be pierced there through to reach to the operating field (see also point ii).

v. A distal end portion of the second rod (40) is **not** narrowed (for together with the first tube (trocar, paragraph [0139]) forming an accommodation space for the part of the connector (43)), in fact the part of the second rod that could be inserted in the trocar is shaft (41), which has one constant diameter over its whole length (see Figures 2 and 11) and nowhere in the description is to derive that there is any narrowing with respect to the "second rod (40)". In addition the shaft (41) in Figure 2 (reproduced below) appears to have a widened tip portion which ***teaches away*** from the present invention.

In addition to the above points, the device of the present invention, both the first (2) and second (7) tube, are arranged to be inserted in a trocar (20) as shown in Figure 3C of the above identified patent application. Figures 3B and 3C (reproduced below) also show the usual limit length of a trocar (20).

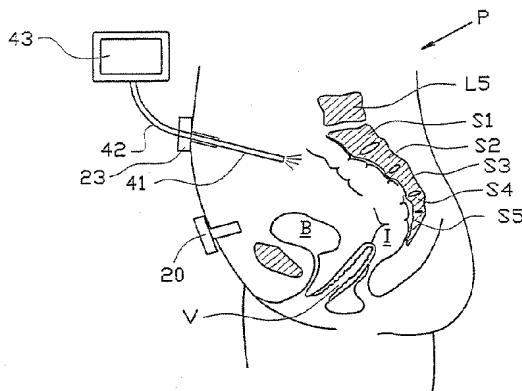


FIG. 3B

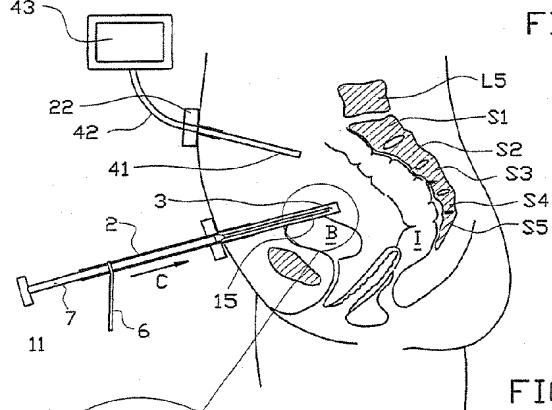
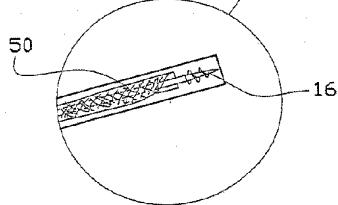


FIG. 3C



Moreover, the trocar is not part of independent claim 54 of the present invention (but see new claims 122 and 123). Therefore any rejection of claim 54 based upon arguments pertaining to a trocar is invalid.

The other applied art references do not address the deficiencies of THIERFELDER et al. discussed above.

THIERFELDER et al. alone or in combination thus does not anticipate or render *prima facie* obvious a claimed embodiment of the present invention.

These rejections are believed to be overcome, and withdrawal thereof is respectfully requested.

Double Patenting

Claims 116 and 121 are objected to as being substantial duplicates. This issue has been addressed by cancelling claim 121.

Conclusion

Prior art of record but not utilized is believed to be non-pertinent to the instant claims.

As no issues remain, the issuance of a Notice of Allowability is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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